IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

MFA.No. 939 of 2002()

OPMV.177/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONERS
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1. ARUKAMMAL W/O. PLANISWAMI, KOTTAKATU THOTTAM, ALAMARTHU PATTI, PLLAPPALLY (VIA), KARUR TALUK, TRICHI DISTRICT, TAMIL NADU STATE

2. SELVI D/O. PLANISWAMY, DO. DO.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS
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1. ARUMUGAM S/O. APPADURAI, DOOR NO.21, IIND MAIN ROAD, KOTHAMBAPURAM, ULSOOR, BANGALORE CITY

2. SYED ALEEM S/O. SYED NADI, NO. 412/ SUSHEELA 4TH CROSS, LALBAGH FORT ROAD, DADDAMAVALLI, BANGALORE-560 004.

3. UNITED INDIA INSURANCE CO. LTD., BRANCH NO.108/7, BAZAR STREET, MAIN ROAD, GANDHI NAGAR, BANGALORE.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.939 OF 20O2

Dated this the 15th day of November, 2007

JUDGMENT

Koshy, J.

An 18 year old youngster while travelling in a bus received fatal injuries when the bus driven in an uncontrollable speed and hit on a tree and over turned. The appellants, mother and sister filed application for compensation contending that the deceased was a loading and unloading worker getting Rs.1,500/- per month. It is the contention that the father of the deceased already died and the 18 year old boy was only the source of livelihood and he was maintaining the family by doing loading and unloading work. The Tribunal, awarded an amount of Rs.1,03,000/- against a claim of Rs.2,16,500/-, even though it was found that the accident occurred due to the negligence of the driver of the bus and bus was duly insured by the third respondent Insurance Company. Only quantum of compensation is disputed in this appeal.

2. The Tribunal has assessed Rs.800/- as the monthly income of the deceased. It is pointed out by learned counsel for the appellants that for a non earning person, under second schedule,

notional income is fixed as RS.15,000/- per year. Here, the deceased was a earning person and he was maintaining his family. Considering the facts and circumstances of the case, we are of the view that atleast the notional income for non earning person under second schedule should be taken for the purpose of calculation of compensation is Rs.15,000/- fixed as the notional income of the deceased and after deducting one-third, we assess Rs.10,000/- as family contribution. It was argued that since he was the only earning member in the family, the age of the deceased also should be looked for calculating compensation. However, the Tribunal considered the age of the mother and fixed 15 as the multiplier. We see no ground for interference as deceased was a well nourished person. If that be so, compensation payable for his death is Rs.1,50,000/-. The Tribunal has awarded only Rs.90,000/-. So, the claimants will be entitled to an amount of Rs.60,000/- more as loss of family contribution. The claimants belong to Trichi (in Tamil Nadu). The accident occurred at Amballoor, Kerala State. His body was taken to the hospital, Thrissur. No amount was awarded for transportation expenses. We award Rs.2,500/- for transportation expenses. Even though it was argued that the amounts awarded

under other heads also inadequate, we are opinion that no enhancement of compensation is needed in other heads. Therefore, the total additional amount payable is Rs.62,500/-.

3. The above Rs.62,500/- should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till deposit over and above the decreed amount by the Tribunal. On deposit of the above amount, 50% should be deposited in the name of second appellant. The second appellant can with withdraw the same when she got married. The balance amount with proportionate interest can be disbursed to the first appellant as the accident occurred 14 years back.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.939 OF 2002

JUDGMENT

15.11.2007